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A.S.No.53 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 19.09.2022

Judgment Pronounced on : **23.09.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.53 of 2002

M.Mahadevan alias Mahadevaiah

.. Appellant

Versus

1. M.Choode Gowdu (Deceased)
2. M.Chandrasekaran
3. Gowramma
4. Sujatha alias Choodamma
5. Subramani
6. Rudrappa
7. Y.Venugopal
8. Putta Madhamma
9. Desikendra Kumar
10. M.Baskar Raj
11. Pushpa
12. Yasodamma
13. Navin

(Respondents 9 to 13 brought on record as LR's of deceased R1 vide order of Court, dated 28.09.2012 made in C.M.P.Nos.362 to 364 of 2011 in A.S.No.53 of 2002)

.. Respondents

Prayer : Appeal Suit filed under Section 96 of the Code of Civil Procedure, 1908 to set aside the judgment and decree, dated 13.08.2001 in O.S.No.258



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of 1996 on the file of the Subordinate Court, Hosur and to allow this Appeal.

For Appellant : Mr.V.Sekar
for Mr.D.Shivakumaran

For Respondents : R1- Died

: Mr.Abrar Mohammed Abdullah
for RR-2, 4 and 8

: Mr.C.Prabakaran,
for Mr.S.N.Arunkumar,
for RR-5 and 6

: Mr.J.Hariharan,
for Mr.V.Nicholos, for R7

JUDGMENT

A. The Appeal Suit :

This Appeal Suit is filed by the unsuccessful plaintiff against the judgment and decree by the learned Subordinate Judge, Hosur, dated 13.08.2001 in O.S.No.258 of 1996, in and by which, the suit filed by the appellant herein was dismissed. For the sake of convenience, the parties are referred to as per their array in the Original Suit itself.

B. The Suit :



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2. The suit was filed by the plaintiff for partition of the suit properties into three equal shares and allotted one such share to the plaintiff and for separate possession, mean profits and for permanent injunction restraining the seventh defendant or his men from interfering with the possession and for costs.

C. The Pleadings :

3. The plaintiff and the defendants 1 & 2 are brothers and they are the sons born to one *Made Gowdu* and *Siddamma*. Yet another daughter, by name *Putta Rajamma* died ten years prior to the filing of the suit and the fifth defendant is her son and the sixth defendant is her husband. The seventh defendant in the suit, namely *Y.Venugopal* was the purchaser of the part of the suit property from the plaintiff's mother *Siddamma*. The eighth defendant in the suit, *Putta Madhamma*, is the wife of the second defendant in the suit, in whose favour, part of the suit property was bequeathed by the plaintiff's mother *Siddamma*.

4. The case of the plaintiff is that the suit properties were purchased by the plaintiff's father *Made Gowdu*, by a registered sale deed, dated



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16.03.1948. While so, in the year 1959, when third parties attempted to interfere with the possession and enjoyment of the suit properties, a suit was filed in O.S.No.426 of 1959, in which, the plaintiff's father, the plaintiff, the first and the second defendants were parties. By a decree, dated 29.09.1962, the suit was decreed in terms of the compromise, as per which, the present suit properties, which were item Nos.8 and 9 in the said suit, were declared to be that of the plaintiff and the first defendant. Thereafter, the plaintiff's father and mother had again filed a second suit in O.S.No.109 of 1965 claiming maintenance and since the above said properties were given to the plaintiff and the defendants 1 & 2 and life estate was directed to be there for the plaintiff's parents, they claimed the monthly maintenance of a sum of Rs.30/- per month or in the alternative, to declare their right to be in possession of the present suit properties till their life time. The plaintiff's father died during the pendency of the said suit in June, 1966 and thereafter, the said suit was not prosecuted and the plaintiff's mother was in possession and enjoyment of the suit properties. The plaintiff's mother *Siddamma* died on 01.08.1994. Before her death, without any right whatsoever, she sold the item No.1 of the suit property to the seventh defendant by a registered sale deed, dated 25.06.1990. The said sale is sham and nominal as she did not



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have any right whatsoever. Similarly, the plaintiff's mother had executed a registered Will, dated 27.06.1994 in respect of the item No.2 of the suit property in favour of eighth defendant, namely the wife of the second defendant and she had no such right to execute the said will. As a matter of fact, even on 13.08.1990, the plaintiff issued a legal notice to the defendants. Since the seventh defendant is attempting to interfere with the properties which continued to be in the joint possession of the plaintiff and the defendants 1 & 2, the plaintiff filed the present suit.

5. The first defendant remained *exparte* in the suit. The second defendant contested the suit by filing a written statement. As per the second defendant the relationship between the parties is admitted. It is contended that the properties are the self-acquired properties of *Made Gowdu* and *Siddamma* and are not joint family properties. After the maintenance suit was filed in O.S.No.109 of 1965, the father of the first and the second defendants died and there was a family arrangement on 28.05.1967, in and by which, the properties were allotted to the plaintiff's mother *Siddamma*. The said *Siddamma* was in possession pursuant to the oral partition. The *Ryotwari Patta* was also issued in favour of the said



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Siddamma by order of the Board of Revenue, Madras, dated 21.01.1974.

By virtue of the same, the said *Siddamma* became absolutely entitled to the suit properties. Therefore, the said *Siddamma* sold item No.1 of the suit property by a registered sale deed, dated 23.06.1990. She had also bequeathed the item No.2 of the suit property in favour of the eighth defendant by a valid, genuine and registered Will, dated 27.06.1994. The second defendant and his wife, namely the eighth defendant were only attending to the said *Siddamma* and therefore, she had bequeathed the property in favour of the eighth defendant. Therefore, according to the second defendant, the suit is without any merits and has to be dismissed.

6. The defendants 3, 4, 5 and 6 remained *exparte*. The seventh defendant also contested the suit by filing a written statement. As per the case of the seventh defendant, *Siddamma* was the absolute owner of the item No.1 of the property. There cannot be any limited estate in respect of the properties of *Siddamma*. The total sale price was fixed at Rs.1,68,000/- which was duly paid and the sale deed was executed on 25.06.1990. Thereafter, the seventh defendant had made improvements on the land by levelling and removing the boulders etc. The seventh defendant is,



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thereafter, in possession and enjoyment of the same. Therefore, being out of possession, the plaintiff should have valued the property and bound to pay proper Court fee under Section 37 of the Court fees Act, 1870. The plaintiff had knowledge about the sale as he had issued legal notice on 13.08.1990 itself and therefore, belatedly in the year 1996, vexatious suit is filed and therefore, the suit is liable to be dismissed. The eighth defendant also filed a written statement duly adopting the written statement filed by the second defendant.

D. The Issues :

7. On the above pleadings, the Trial Court framed the following issues:-

(i) Whether the plaintiff is entitled to a share in the suit properties, if so, to what extent?

(ii) Whether the compromise decree in O.S.No.426 of 1959 will be binding on the second defendant?

(iii) Whether the suit properties belong to Siddamma on account of the family arrangement?

(iv) Whether the sale deed executed in favour of the seventh defendant is sham and nominal?



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(v) *Whether on account of the Inam Act, the item No.2 of the suit property will belong to Putta Madhamma, the eighth defendant?*

(vi) *To what reliefs, the plaintiff is entitled to?*

Additional issue:-

Whether the Will, dated 24.06.1994 is genuine? Whether as per the said Will, the item No.2 of the suit schedule property belongs to the eighth defendant?

E. The Evidence :

8. On the said issues, the plaintiff examined himself as P.W.1 and **Exs.A-1** to **A-24** were marked on behalf of the plaintiff. The second defendant was examined as D.W.1. The eighth defendant was examined as D.W.2 and one *Nanjundappa* was examined as D.W.3. On behalf of the defendants, **Exs.B-1** to **B-3** were marked. Thereafter, the Trial Court proceeded to hear the learned Counsel on either side and by a judgment, dated 13.08.2001, found that the plaintiff's mother *Siddamma* had become the absolute owner of the suit schedule properties by virtue of the *Ryotwari Patta* being granted in her name under Section 11 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 and in view of the



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Section 14 of the Hindu Succession Act, 1956, even the limited estate of women got enlarged and became absolute estate and therefore, the plaintiff's mother became the absolute owner of the property. The Trial Court held that the earlier compromise decree in O.S.No.426 of 1959 would not bind the parties. Inter alia, for the above findings, the Trial Court dismissed the suit. Aggrieved by which, the present Appeal Suit is filed.

F. The Submissions :

9. Heard *Mr.V.Sekar*, learned Counsel appearing on behalf of the appellant; *Mr.Abrar Mohammed Abdullah*, learned Counsel appearing on behalf of the respondents 2, 4 and 8; *Mr.C.Prabakaran*, learned Counsel appearing on behalf of the respondents 5 and 6; *Mr.J.Hariharan*, learned Counsel appearing on behalf of the seventh respondent.

10. *Mr.V.Sekar*, learned Counsel appearing on behalf of the appellant, taking this Court through the pleadings and the exhibits marked, would submit that by **Ex.A-2** compromise decree in respect of both the items of the suit properties, the plaintiff and his two brothers, namely the defendants 1 & 2, were the owners. The plaintiff's father had though purchased the suit



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property by a registered deed in **Ex.A-1**, had given up his right in favour of his three sons i.e., the plaintiff and the defendants 1 & 2. Therefore, the said compromise decree would be valid and binding between the parties. He would submit that even in **Ex.A-3**, the second suit filed by the parents of the plaintiff, they had categorically admitted about the earlier compromise and that they are acting upon the earlier compromise and only prayed for the limited estate, in view of the maintenance amount not being paid to them. In view thereof, it is clear that the properties are that of the plaintiff and the defendants 1 & 2. Each one of them is entitled to 1/3rd share. The plaintiff's mother *Siddamma* was neither the purchaser of the property in the sale deed, dated 16.03.1948 (**Ex.A-1**) nor was granted any right by the Civil Court in **Ex.A-2** compromise decree. While so, just because for the sake of convenience of the members of the family, **Ex.A-4 Ryotwari Patta** was taken in the name of the plaintiff's mother *Siddamma*, she cannot claim title to the suit properties.

11. The learned Counsel would further submit that once the plaintiff's mother had no right or title or interest in respect of the suit properties, except the limited right of enjoyment, the sale deed executed by her and the



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Will executed by her are *void ab initio* and the plaintiff need not even specifically challenge the sale deed. Therefore, he would submit that the Trial Court erred in not decreeing the suit. He would submit that the findings of the Trial Court that the limited estate stood enlarged by virtue of Section 14 of the Hindu Succession Act, 1956 is erroneous, especially, Section 14(2) of the Act, would make it very clear that enlargement of the estate will not be applicable in the present case, as the limited estate was granted under a decree of the Court. Therefore, the said reasoning of the Trial Court cannot stand.

12. As far as the next finding about the title of the plaintiff's mother based on the *Ryotwari Patta* is concerned, the learned Counsel would submit that the order of the Settlement Tahsildar/Board of Revenue will not be superior to that of the compromise decree of the Civil Court. When there is a decree inter-parties, the compromise decree will prevail over the grant of patta. As a matter of fact, the patta is only the recognition of the existing right and therefore, the mere fact that the patta is granted in the name of the plaintiff's mother will not, in any way, nullify the **Ex.A-2** compromise decree and the rights of the parties got crystalised in the said compromise



decree and therefore, the finding that the compromise decree is not binding is again illegal and therefore, the learned Counsel would pray for allowing the appeal.

13. In support of his submissions, the learned Counsel firstly relied upon the judgment of the Hon'ble Supreme Court of India in ***Basanti Devi (Dead) by LRs and Ors. Vs. Rati Ram & Ors.***¹, more specifically relying upon the paragraph No.14 for the proposition that in a case like the one on hand, the limited estate will not get enlarged into a full right. It is useful to quote the paragraph No.14 of the said paragraph which reads as follows:-

" **14.** *In the instant case, there is nothing on record to show that the property in the hands of Chimmlu came in lieu of maintenance or on account of arrears of maintenance. The property in her hands came as a result of she being a successor of Sheo Lal. Sheo Lal did not possess any property. He had only life interest in the property which did not enlarge into a full right because Section 14(1) does not recognise the pre-existing right of a Hindu male. Smt Chimmlu could not have acquired a better right than her husband had in the property in dispute. Right of Sheo Lal, as also of Smt Chimmlu, flows from the decree. Therefore, her right would not mature into full-fledged ownership by virtue of Section 14(1). She has acquired the right by virtue of the*

¹ (2018) 16 SCC 608



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compromise decree for the first time. Therefore, Section 14(2) would apply to the instant case."

14. The learned Counsel would then rely upon the judgment of this Court in ***N.Thirumuppa Gowder Vs. Ponnusamy and Ors.***², more specifically relying upon the paragraph Nos.94 and 95 for the proposition that if the alienation is made in derogation of the right of the plaintiff, the same will not, in any manner, bind the plaintiff and the plaintiff will still be entitled to the share in the property. The said paragraph Nos.94 and 95 are extracted as hereunder:-

" **94.** *On coming to the instant case on hand, the Plaintiff is able to establish the fact that till 1993, he had been in possession and enjoyment of the Suit property along with his elder brother, viz., the First Defendant and thereafter, taking advantage of the entries made in the revenue records in his name, the First Defendant had in the fourth week of July 1994 dispossessed him from the property and thereafter, unilaterally had alienated the Suit property in favour of the Defendants 2 & 3 under two Sale Deeds, vide Documents Nos. 531 of 1995 & 532 of 1995.*

95. *In the light of the above said decision, though the First Defendant is not having any right in respect of the Plaintiff's ½ share in the Suit property, he had sold out the entire property in favour of the Defendants 2 & 3, deliberately, which is not permissible under law as he cannot*

² 2014 (3) MWN (Civil) 383



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convert the Joint Family property into his personal property."

15. The learned Counsel would further rely upon the judgment in ***Srinivasan and 6 Ors. Vs. Sri Madhyarjuneswaraswami, Pattaviathalai, Tiruchirapally District by its Executive Officer at Pettavaithalai Devasthanam and 5 Ors.***³, whereby, the Full Bench decided the question as to whether the Civil Court still have jurisdiction in view of the Act, namely the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 and after considering all the relevant judgments, the Full Bench of this Court in its judgment in paragraph No.18, had answered the reference holding that the jurisdiction of the Civil Court to entertain a suit for declaration of title and injunction is not barred. It is useful to extract the paragraph No.18 of the said judgment which reads as hereunder:-

" 18. For all the reasons stated above, we answer the question referred to the Full Bench in the negative by holding that the jurisdiction of the Civil Court to entertain a suit for declaration of title and injunction is not barred by reason of the grant of patta under the provisions of Tamil Nadu Act 30 of 1963."

³ 1998 (I) CTC 630



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Therefore, in view of the above judgment and for the submissions made by him, the learned Counsel would pray that the appeal is to be allowed and the suit be decreed as prayed for.

16. Per contra, *Mr.J.Hariharan*, learned Counsel appearing on behalf of the seventh respondent, would submit that in this case, the seventh defendant is concerned with the item No.1 of the suit schedule property. The title in respect of the suit schedule property is conferred on the mother of the plaintiff only by *Ex.A-4, Ryotwari Patta*. By virtue thereof, she, being the owner, has alienated the item No.1 of the suit property for valuable consideration and after purchasing the same, the seventh defendant is in possession and enjoyment of the same. The plaintiff had, even in the year 1990, issued legal notice. However, inspite of knowledge did not institute the suit within a period of three years from the date of sale. The plaintiff also did not specifically pray for setting aside the sale deed. The suit is vexatious and does not have any merits. The earlier compromise decree was subsequently overridden by a family arrangement. By way of oral partition, the plaintiff's mother *Siddamma* was allotted the suit properties. Pursuant to the allotment, she was in possession and enjoyment



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of the same. Therefore, according to the learned Counsel, the suit is rightly dismissed by the Trial Court.

17. *Mr.Abrar Mohammed Abdullah*, learned Counsel appearing on behalf of the respondents 2, 4 and 8, would also make submissions on the same lines, adopting the submissions of the learned Counsel for the seventh defendant and submits that apart from the above, the Will is also held to be valid and genuine and the same is proved in accordance with law by the eighth defendant. *Mr.C.Prabakaran*, learned Counsel appearing on behalf of the respondents 5 and 6, would submit that he has instructions to sail along with the appellant and therefore, he supports the appeal and prays that the appeal be allowed as prayed for.

G. The Admitted Facts :

18. I have considered the rival submissions made on behalf of either side and perused the material records of this case. On a careful consideration of the pleadings and evidence on record, the following are the admitted facts in this case:-



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- The suit properties form part of the 'estate' covered under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948.
- The plaintiff's father purchased the property on 16.03.1948 vide *Ex.A-1*, sale deed and thereafter, there was interference into the possession and enjoyment of the plaintiff, the defendants 1 & 2 and their father. Therefore, a suit was filed in O.S.No.426 of 1959 which ended in a compromise decree, in which, this suit item Nos.1 and 2 are mentioned as item Nos.8 and 9 in the said suit. Apart from the defendants/third parties, the plaintiff's father also gave up his right in respect of the suit properties in favour of the plaintiff, and the defendants 1 & 2.
- As per the said terms of compromise, the plaintiff's father and thereafter mother are to be paid maintenance of Rs.30/- per month or in the alternative, they will have life estate in respect of the suit properties.
- A suit was filed in O.S.No.109 of 1965 for maintenance by the plaintiff's father and mother. Pending the suit in June, 1966, the plaintiff's father died. The suit properties were therefore left for their



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enjoyment. The suit was thereafter allowed to be dismissed for default. However, the suit properties continued to be in the possession and enjoyment of the plaintiff's mother.

➤ On 21.01.1974, the settlement officer passed an order under Section 11 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 granting *Ryotwari Patta* in the name of the plaintiff's mother *Siddamma* and vide **Ex.A-4**, the consequent patta in **Ex.A-5** was also granted.

➤ The plaintiff's mother had, on 25.06.1990, sold item No.1 of the suit schedule property in favour of the seventh defendant.

➤ The plaintiff's mother had, thereafter, died on 01.08.1994.

➤ The relationship between the parties that the plaintiff and the defendants 1 & 2, being the brothers and relationship in respect of the other defendants are all admitted.

H. The Facts in Issue & Findings:

19. The first disputed fact is as to whether there was an oral partition in the year 1967 as per **Ex.A-14**. To answer the same, firstly, the factum as to the partition in the year 1967, though is admitted by the plaintiff, it is said



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to be in terms of **Ex.A-14**. The said fact was not mentioned in the plaint. Even though the second defendant pleaded specifically that there was an oral partition, no reply was filed by the plaintiff. For the first time, contrary to the pleadings, **Ex.A-14** was sought to be produced. The signature of the second defendant is denied in **Ex.A-14**. The plaintiff did not take any steps to prove the signature. This apart, **Ex.A-14** is an unregistered panchayat muchalika which was originally written in Telugu and the Tamil translation of the same reads as follows:-

"... 1967ம் வருடம் மே 28ம் தேதி
ஒதூர் தல்லாகா டெங்கணிக்கோட்டை
சப்தாலாகாவுக்கு சேர்ந்த ஆகபாலு தாபு
நெல்லுமாரு கிராமத்திலிருக்கும்
மாதேகெளடு குமாரர்கள் துடேகவுடு (1)
மஉறா தேவய்யா (2) சந்திரசேகரய்யா (3)
ஆகிய நாங்கள் மூவரும் சேர்ந்து கீழ்கண்ட
பஞ்சாயத்து தாரர்கள் முன்னிலையில்
நாங்கள் பாகம்செய்துக்கொண்ட சொத்தின்
பாகமுச்சளிகா.... "

Therefore, it can be seen that it does not record any oral partition which already happened, but, it records the actual partitioning of the property. Therefore, in that view of the matter, the document in **Ex.A-14** is an unstamped and unregistered document and therefore cannot be relied upon or looked into by the Court. This position has been laid down in detail



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by a Division Bench of this Court in *A.C.Lakshmipathy & Anr. Vs. A.M.Chakarapani Reddiar*.⁴

20. On the other hand, at the earliest point of time in the written statement itself, the second defendant has categorically pleaded that there was an oral partition/family arrangement. On a cumulative reading of the evidence, it would be clear that the property was purchased by the plaintiff's father in the year 1948 and by virtue of the compromise decree in the year 1962, the property was left to the plaintiff and the defendants 1 & 2, but, however, a limited estate was reserved for the plaintiff's father and mother. Thereafter, the plaintiff/defendants 1 & 2 did not maintain the parents and therefore, the second suit in *Ex.A-3* also came to be filed. Therefore, after the death of the father, it is in the natural course of events that an oral partition was made in which the properties were given to the plaintiff's mother absolutely. The defendants have pleaded and also let in evidence that the property was given to the plaintiff's mother by virtue of the oral partition. Only as a counterblast to the same, said valid oral partition, *Ex.A-14* is tried to be introduced by the plaintiff, but, however, without any pleading.

⁴ 2001 (1) CTC 112



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21. This apart, the very fact that thereafter, the order of the settlement officer/Board of Revenue for *Ryotwari Patta*, was obtained in the name of the plaintiff's mother in the year 1974 and thereafter, the patta was also issued in **Ex.A-5** in the year 1984, which all categorically buttress the case of the defendants. There is yet another very important clinching evidence to hold in favour of the defendants and against the plaintiff because even in the cross-examination of the plaintiff, the plaintiff categorically admits as follows:-

".... எக்சிபிட் எ4 நடவடிக்கையில் நாங்கள்
எல்லாம் வாக்குமூலம் கொடுத்திருக்கிறோம்
...."

Therefore, it can be seen that only because it was given to the plaintiff's mother absolutely, the plaintiff also gave a statement in **Ex.A-4** proceedings. Therefore, I hold that there was an oral partition/family arrangement in the year 1967, pursuant to which, the plaintiff's mother *Siddamma* was granted the property.

22. The second disputed fact is as to whether the sale was for proper and valid consideration or whether it is sham and nominal. On a plain reading of the sale deed, coupled with the written statement filed by the



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seventh defendant and the evidence of D.W.2, it would be clear that the seventh defendant had purchased the same for valuable consideration and is in possession and enjoyment of the same. As a matter of fact, the sale deed is primarily sought to be assailed before this Court only on the ground that the plaintiff's mother did not have title and therefore, the sale is *void ab initio*. The said legal submission will be dealt with in the later part of the judgment, otherwise, factually, I hold that the seventh defendant has purchased the property for a valid consideration and therefore, the sale deed cannot be said to be sham or nominal.

23. The third fact in dispute is as to whether the plaintiff's mother had executed a valid Will in favour of the eighth defendant in respect of the item No.2 of the suit schedule property. The Will has been duly proved by examining D.W.3, the attesting witness. The attending circumstance, namely that the eighth defendant was only taking care of the plaintiff's mother, is categorically proved. The Will is otherwise a registered Will. Even before this Court, except for questioning the very title of the plaintiff's mother to execute the Will, no serious dispute on the genuineness of the Will was raised and accordingly, I hold that by the genuine Will, dated



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27.06.1994 in **Ex.B-3**, the item No.2 of the suit schedule property is bequeathed in favour of the eighth defendant.

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I. The Points for Consideration :

24. In view of my above findings of facts, the following questions need to be answered so as to decide this Appeal Suit:-

(i) Whether or not, the plaintiff's mother, Siddamma, became entitled to the suit schedule properties by virtue of the oral partition and Ex.A-4 Ryotwari Patta granted under the Act or whether the compromise decree in O.S.No.426 of 1959 would prevail?

(ii) Whether the right of the plaintiff's mother stood enlarged into an absolute estate by virtue of the Section 14 of the Hindu Succession Act, 1956?

(iii) Whether the plaintiff is liable to be non-suited on account of absence of specific challenge to the sale deed in favour of the seventh defendant and whether the suit is barred by limitation?

J. Question No.1 :

25. Admittedly, the suit property is part of *the estate* covered under the Act. Therefore, by virtue of the Section 3(b) of the Act, it stood vested in the Government with effect from 19.04.1949, the date on which the Act



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came into force notwithstanding the purchase of the plaintiff's father by **Ex.A-1** sale deed, dated 16.03.1948. Therefore, when the compromise decree happened vide **Ex.A-2** on 29.09.1962, as a matter of fact, the land still stood vested in the Government and the compromise decree can at best be binding inter-parties' obligations and liabilities, but, cannot and does not confer any title on the plaintiff as well as the defendants 1 & 2, unless their existing right is recognised by grant of *Ryotwari Patta* under the act. As per the scheme of the Act, even though the grant of *Ryotwari Patta* is only a recognition of the existing right, the very fact that the plaintiff also gave statement in support of the existing right of his mother, which can only by way of the oral partition/family arrangement as pleaded by the second defendant and therefore, the proceedings are in the nature of confirming the title of the holder, though not conferring the title.

26. In this case, by an order, dated 21.01.1974, the settlement officer had adjudicated and confirmed the right in favour of the plaintiff's mother. Even though the learned Counsel relied upon the Full Bench judgment of this Court in **Basanti Devi (Dead) by LRs and Ors.** (cited supra), there can be no quarrel about the proposition that the Civil Court can still have the



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power to adjudicate the title of the parties and there is no ouster of Civil Court jurisdiction. But, however, in this case, the compromise decree was not an adjudication between the rights of the plaintiff, the defendants 1 & 2 vis-a-vis the plaintiff's mother *Siddamma*. As a matter of fact, she was not even a party to the said suit. Therefore, the *ratio* in the above Full Bench judgment that the Civil Court will still have the right to adjudicate will not in any manner further the case of the appellant.

27. In this case, after the compromise decree, there was a family arrangement and by virtue of the said oral partition, the plaintiff's mother was given the property. The very fact that the plaintiff also gave a statement before the settlement officer at the time of grant of patta would confirm the said oral arrangement. Ultimately, the *Ryotwari Patta* under Section 11 of the Act was granted in favour of the plaintiff's mother alone. The said patta was not challenged by the plaintiff in the manner known to law either under the provisions of the Act or before the Civil Court by filing any suit for declaration of title. Therefore, the events being subsequent to the compromise decree, the question as to the validity of the compromise decree or otherwise does not arise in the instant case. As a matter of fact, under



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identical circumstances, while considering the validity of the compromise decree vis-a-vis the rights crystalised under the similar Act, the Division Bench of this Court, in **Dr.Natesan (died) and Ors. Vs. Pandari Narayanan (died) and Ors.**⁵, had held that the parties to the compromise cannot have better right than what is granted under the Act and it is useful to extract the relevant paragraphs of the judgment which reads as hereunder:-

" 23. A Division Bench of this Court, in **Sangili v. Ramakrishnan [1974 (I) M.L.J. 87]**, held that a compromise decree is not a decision by the court and it is the acceptance by the court of something to which the parties had agreed; and a compromise decree merely sets the seal of the court on the agreement of the parties, and the court does not decide anything nor can it be said that a decision was implicit in it. Only a decision by a court can be a *res judicata*, whether statutory under Section 11 of the code of Civil Procedure or constructive as a matter of public policy, on which the entire doctrine rests. The compromise decree cannot directly be regarded as a decision on a matter which was heard and decided and, therefore, cannot operate as *res judicata*. Their lordships followed the decision of the Supreme Court in **Pulavarthi Venkata Subba Rao & Others v. Valluri Jagannadha Rao [1964 (2) S.C.J. 518]**. Their lordships held that it is open to the plaintiffs to ignore such decree and pray for necessary relief of declaration of title and recovery of possession on the basis that the said decree is null and void and inoperative. In **Biswabani Pvt. Ltd. v. Santosh Kumar [A.I.R.**

⁵ 2003-3-L.W. 839



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1980 S.C. 226], the Supreme Court held that a consent decree incorporating the terms of a fresh lease, to be effective as a valid lease, required registration in view of the provisions contained under Section 107 of the Transfer of Property Act read with Section 17(1)(d) of the Registration Act 1908, because the period reserved under the lease was exceeding one year. It was held that if the lease is void for want of registration, neither party to the indenture can take advantage of any of the terms of the lease.

....

25. For all the above reasons, we find that the inam is a service inam and that the alienation made in the form of a permanent lease is illegal and the plaintiffs are entitled to continue in possession of the property by virtue of the patta granted, which has become final. We further find that the plaintiffs are not estopped from questioning the compromise and the said compromise decree is not binding on the principle of res judicata."

Therefore, the order in **Ex.A-4** and the consequential patta in **Ex.A-5**

within the scheme of the Act actually confirm the title on the plaintiff's mother, which is on the basis of the oral partition. In view of the plaintiff's and the defendants 1 & 2 giving up their rights under the compromise decree, cannot thereafter claim right under the **Ex.A-2** compromise decree. Accordingly, I answer the question in favour of the defendants and against the plaintiff.



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K. Question No. 2:

28. To consider the question No.2, it is useful to extract Section 14 of the Hindu Succession Act, 1956, which reads as follows:-

" **14. Property of a female Hindu to be her absolute property.—**

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."



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29. The learned Counsel for the appellant also relied upon the judgment in *Basanti Devi (Dead) by LRs and Ors.* (cited supra) and submitted that in attachment of the properties in *lieu* of the arrears of maintenance by the Court will not enlarge into an absolute estate. In view of my findings that in this case, even though initially, there was only a limited estate and even though initially it was only on account of maintenance, since, by a latter family arrangement, the property was given absolutely in favour of the plaintiff's mother *Siddamma*, the said question of the limited estate, being conferred and the same enlarging into an absolute estate, does not arise in this case and I answered the question accordingly.

L. Question No.3 :

30. As far as this question is concerned, it can be seen that no specific issue has been framed by the Trial Court as to whether the plaintiff should be non-suited for not making a challenge to the sale deed and no issue relating to limitation is also framed so as to enable the parties to let in evidence in this regard. In view of my findings supra in respect of question No.1 above, wherein I have found clear and categorical title in respect of the plaintiff's mother *Siddamma*, on account of the oral partition as well as the



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Ryotwari Patta being granted in favour of the plaintiff's mother, this question itself would be superfluous and therefore need not be answered.

M. Answers to the Issues :

31. In view of my answers to the facts in dispute as well as to the above questions framed, I answer the issue No.1 holding that the plaintiff is not entitled to any share in the suit property. I answer the issue No.2 that even though to the limited extent of the inter-parties rights between the plaintiff and the defendants 1 & 2, the compromise decree in O.S.No.426 of 1959 will be binding, but at the time of compromise decree, the property itself is vested in the Government and was subsequently granted only in favour of the plaintiff's mother and therefore, the compromise decree has become redundant in view of the subsequent developments i.e., by an oral partition/family arrangement in the year 1967 and thereafter, the grant of *Ryotwari Patta*. I answer issue No.3 in the affirmative that the suit properties belong to the plaintiff's mother *Siddamma* as per the family arrangement. I answer the issue No.4 against the plaintiff and in favour of the seventh defendant holding that the sale in favour of the seventh



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defendant is not sham and nominal and is a valid sale. I answer the issue No.5 and the additional issue by holding that the eighth defendant became entitled to the second item of the suit property by virtue of the registered Will which is duly proved in accordance with law being executed by the plaintiff's mother, *Siddamma*, with a valid title. For all these above answers, I answer the issue No.6 against the plaintiff that he is not entitled any relief in the present suit and the Trial Court has rightly dismissed the suit.

N. The Result :

32. For all the above reasons, the Appeal Suit is dismissed with costs throughout to the defendants 2, 7 and 8. Consequently, C.M.P.No.4686 of 2002 is closed.

23.09.2022

Index : yes
Speaking order
grs

To

The Subordinate Court, Hosur.



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D.BHARATHA CHAKRAVARTHY, J.,

grs

Pre-Delivery Judgment in

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